

resident who is displaced by rehabilitation or demolition, the term *initiation of negotiations* means 45 calendar days before (1) the issuance of the invitation for bids for the project or (2) the start of force account work, whichever is applicable.

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[58 FR 13931, Mar. 15, 1993, as amended at 61 FR 8738, Mar. 5, 1996]

§ 968.110 Other program requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, the PHA shall comply with the following program requirements:

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 503 of the Rehabilitation Act of 1973 and 41 CFR chapter 60-471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and 24 CFR part 40.

(b) [Reserved]

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR parts 59-79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates.* (1) *Davis-Bacon.* With respect to modernization work or contracts over \$2,000 (except for nonroutine maintenance work), all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less

than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State.* Prevailing wage rates determined under State law are inapplicable under the circumstances set forth in § 965.101 of this chapter.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g)–(j) [Reserved]

(k) *Lead-based paint poisoning prevention*—(1) *General.* (i) The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821-4846) and HUD implementing regulations (24 CFR parts 35 and 965, subpart H). The five-year funding request plan for CIAP (as described in § 968.210) shall be amended to include the schedule for lead-based paint testing and abatement. Random testing shall be completed by December 6, 1994 (42 U.S.C. 4822(d)(2)(B)). Testing and abatement shall be completed with respect to all family projects constructed or substantially rehabilitated prior to 1978 approved for (or applications for) comprehensive and homeownership modernization (paragraphs (k)(1)(ii) (A) and (B) of this section); other pre-1978 family projects not undergoing comprehensive and homeownership modernization (paragraph (k)(1)(ii)(C) of this section); and special purpose modernization. Any previous testing or abatement work which was done in accordance with the June 6, 1988 regulation (53 FR 20790) or the Lead-Based Paint Poisoning Prevention Act as

amended by the Housing and Community Development Act of 1987 shall not be redone in accordance with the requirements of this section.

(ii) The requirements for lead-based paint testing and abatement apply to the following three categories of special purpose modernization: Vacant unit reduction; accessibility for handicapped (for any dwelling in such housing in which any child who is less than 7 years of age resides or is expected to reside); and cost-effective energy efficiency measures. In the case of funding for accessibility for the handicapped and cost-effective energy efficiency measures, LBP testing and abatement shall be performed only when the rehabilitation involves removal of walls, doors and windows. The Regional/Field Office may determine on a case-by-case basis whether lead-based paint testing and abatement should be allowed for a PHA requesting special purpose modernization for physical improvements to replace or repair major equipment systems or structural elements (such as, the exterior of buildings). With regard to lead-based paint testing for special purpose modernization, if the project has already been randomly sampled before the date of this rule using the criteria found in the June 6, 1988 regulations or after the date of this rule using the criteria outlined in paragraph (k)(2) of this section, no further testing is necessary. If, however, the project was not a part of a random sample, then it will be necessary for the PHA to test for special purpose modernization in accordance with paragraph (k)(2) of this section. If lead-based paint is found as a result of previous random testing or current testing, it must be abated.

(A) *Comprehensive, Special Purpose, and Homeownership Modernization in Progress.* With respect to family projects approved for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint for which funds have been reserved by HUD:

(i) PHAs that have awarded any construction contract (including A&E contracts) before April 1, 1990, the provisions regarding random testing and

abatement in effect at that time of award shall apply and

(2) PHAs that will advertise for bid or award a construction contract (including architectural and engineering (A&E) contracts) or plan to start force account work on or after April 1, 1990, excluding those contracts solely for emergency work items, shall not execute these contracts until random testing as described in this paragraph has taken place and any necessary abatement as described in paragraph (k) (2), (3) and (4) of this section is included in the modernization budget.

(B) *Applications for Comprehensive, Special Purpose, and Homeownership Modernization Projects.* With respect to applications for family projects for comprehensive, special purpose, and homeownership modernization (assisted under section 14 of the United States Housing Act of 1937) which may contain lead-based paint, no construction contracts awards on or after April 1, 1990 (including architectural and engineering (A&E) contracts and force account work, excluding those contracts solely for emergency work items, shall be executed until random testing as described in paragraph (k) (2), (3) and (4) of this section has taken place and any necessary abatement as described in paragraph (k)(4) of this section is included in the modernization budget.

(C) *Lead-Based Paint Modernization; Other Family Projects Not Undergoing Comprehensive, Special Purpose, or Homeownership Modernization.* Any pre-1978 family projects (assisted under section 14 of the United States Housing Act of 1937) not undergoing comprehensive, special purpose, or homeownership modernization (as covered in paragraph (k)(1)(ii) (A) and (B) of this section) including pre-1978 family projects which *previously have been modernized* with comprehensive, special purpose or homeownership modernization grants under previous regulations shall be randomly tested as described in paragraph (k)(2) of this section and abated as described in paragraph (k)(4) of this section if lead-based paint is found, unless testing and abatement were previously done in accordance with paragraph (k)(1) of this section.

(2) *Random testing.* PHA's shall use random testing on family projects (including homeownership units) constructed prior to 1978 or substantially rehabilitated prior to 1978. It is strongly recommended, but not required, that PHA's use the random testing methodology set forth in the Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (Lead-Based Paint Interim Guidelines) drafted for the Comprehensive Improvement Assistance Program (CIAP), and other Public and Indian Housing programs, and issued and published at 55 FR 14555, April 18, 1990, part II, with an amendment of chapter 8 and typographical clarifications at 55 FR 39874, as periodically amended or upgraded, and other future outstanding official Departmental issuances in effect at the time of testing. Random testing shall be scheduled or prioritized by age of the family projects and whether the family projects are known to have lead-based paint or the presence of previous EBL's. If evidence of lead-based paint is found in units that were in the random sample, the PHA is required to:

- (i) Test the corresponding surfaces where lead-based paint was found in other units of the universe being tested, or
- (ii) Abate all like surface in that universe without further testing.

For scattered site family projects involving single unit structures that are not contiguous or were built and/or rehabilitated at different times, the PHA shall cause each unit to be tested for lead-based paint. Interior common areas to be sampled include PHA-owned or operated child care facilities. Testing, tenant protection, lead-based paint debris disposal, recordkeeping, and state and local law requirements as described in §§ 965.706, 965.707, 965.708, 965.709 and 965.710 of this chapter shall be followed. Random testing as described in this paragraph (k)(2) is an eligible cost under lead-based paint modernization and is a planning cost as described in § 968.205(d).

(3) *Testing methods.* Testing shall be performed in accordance with § 965.706(c).

(4) *Abatement methods.* Abatement shall be performed in accordance with

§ 965.706(d)(2). Abatement within a comprehensive and homeownership modernization project should be prioritized in relation to the immediacy of the hazards to children under seven years of age.

(l) [Reserved]

(m) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 56 FR 15175, Apr. 15, 1991; 57 FR 5573, Feb. 14, 1992; 57 FR 14761, Apr. 22, 1992; 58 FR 13932, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996]

§ 968.112 Eligible costs.

(a) *General.* A PHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP PHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 968.325 and approved Five-Year Action Plan under § 968.315(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 968.315 and the Annual Submission under § 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP PHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, a PHA